No. 93

Mot. of Porter, Green & Isham for Petitioner (on mo.)

FILED
NOV 16 1901
JAMES H. McKENNEY, Clerk

IN THE

Supreme Court of the United States.

Filed Nov. 16, 1901.

OCTOBER TERM, A. D. 1901.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, *Petitioner*, vs. SALLIE E. HILLMON, *Respondent*.	No. 316.

MOTION AND SUGGESTIONS IN SUPPORT THEREOF.

GILBERT E. PORTER,
JAMES W. GREEN,
EDWARD S. ISHAM,
COUNSEL FOR PETITIONER.

The Gunthorp-Warren Printing Company, 53 Dearborn St., Chicago.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1901.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, *Petitioner*, vs. SALLIE E. HILLMON, *Respondent*.	No. 316.

MOTION.

And now comes the Connecticut Mutual Life Insurance Company, petitioner in the above entitled cause, and moves the court for an order—

First. Directing that the transcript of the entire record of said cause in the Circuit Court of Appeals for the Eighth Circuit, heretofore filed with the clerk of this court and considered by the court upon petitioner's application for a writ of certiorari, be taken and stand as a due return to the writ of certiorari granted herein; or,

Second. Directing the clerk of the Circuit Court of Appeals for the Eighth Circuit to certify to this court one of the printed copies of the record of said cause in the Circuit Court of the United States for the District of Kansas

which were printed under his direction and supervision for use in said Court of Appeals, without charge therefor to this petitioner, except the charge of $1 for making and attaching his certificate to such printed copy, and that such printed copy when so certified, together with the transcript now on file of the proceedings of said cause had in the Circuit Court of Appeals, be taken and stand as a due return to the writ of certiorari heretofore granted herein.

GILBERT E. PORTER,
J. W. GREEN,
EDWARD S. ISHAM,
Counsel for Petitioner.

STATEMENT OF FACTS UPON WHICH MOTION IS BASED.

A judgment for $11,034 was entered, on November 18, 1899, in the Circuit Court of the United States for the District of Kansas, against this petitioner and in favor of respondent herein, to reverse which a writ of error was sued out of the office of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit by this petitioner. Upon the filing in that court of a transcript of the record in the Circuit Court, the clerk of the Circuit Court of Appeals caused said transcript to be printed, under his supervision and direction, in accordance with the rules of that court, and copies of the transcript so printed were used by that court in the consideration of the cause. Petitioner deposited with said clerk, as required by the rules of said Circuit Court of Appeals, to cover the expense of printing said transcript, the sum of three thousand and twenty-five dollars ($3,025).

The judgment of the Circuit Court was affirmed by the Circuit Court of Appeals, whereupon counsel for this petitioner, desiring to present to this court a petition for a writ of certiorari, requested the clerk of the Circuit Court of Appeals to prepare for petitioner a transcript of the entire record in that court and to incorporate therein one of said printed volumes in his possession, without requiring petitioner to pay the cost of a reproduction of such printed volume. The clerk, while consenting to use one of said printed volumes as requested, declined to prepare and furnish to petitioner such a transcript except upon payment to him of $1,628 (which sum included the charge of twenty

cents per folio for about 8,000 folios of matter in said printed volume), stating that he was obliged to make such charge under that rule of this court which requires him to exact a charge for "entering any rule, or making or copying any record or other paper, for each one hundred words, 20 cents." (169 U. S., 740, item 6.) Counsel for petitioner thereupon requested the clerk to prepare and send to them a transcript of the record of said cause in the Circuit Court of Appeals, omitting therefrom the transcript of the record in the Circuit Court, and also requested the clerk to forward directly to the clerk of this court eleven of the printed copies of the transcript of the record in the Circuit Court. Upon the receipt of such partial transcript, for which this petitioner paid to the clerk the sum of nineteen dollars ($19), this petitioner filed the same in this court, and that transcript, together with one of the printed copies of the record in the Circuit Court, forwarded by the clerk of the Circuit Court of Appeals to the clerk of this court and verified by the affidavit of one of petitioner's counsel, constituted the entire record of the cause upon which this court granted petitioner's application for a writ of certiorari.

After the issuance of the writ by this court on the 21st day of May, 1901, this petitioner requested counsel for the respondent herein to stipulate that the transcripts theretofore filed herein, constituting the record upon which the writ was issued, should be taken and stand as a return by the clerk of the Circuit Court of Appeals to said writ, but counsel for respondent declined to so stipulate. In a reply to a written request to enter into such stipulation this petitioner's counsel received from C. F. Hutchings, Esq., one of the counsel for respondent, the following letter:

(Letter-head omitted.)

"Kansas City, Kans., July 17, 1901.

"Messrs. Isham, Lincoln & Beale,
718 The Temple,
LaSalle & Monroe Sts.,
Chicago, Illinois.

Gentlemen:

Connecticut Mutual Life Insurance Co. *vs.* Hillmon.

Replying to yours of the 16th inst., in relation to stipulating that the record filed in the Supreme Court of the United States in support of the application for a writ of certiorari may stand as a return to the writ.

Personally I can see no objection to so stipulating and I think it the proper practice. I submitted the matter, however, to Mr. Wheat, who is senior counsel in the case, but he, with the concurrence of Mr. Atwood, declines to make the stipulation. I notified Mr. Green, by letter, of the conclusions my colleagues had come to.

Very respectfully yours,

Dict. C. F. HUTCHINGS."

State of Illinois, } ss.
County of Cook. }

Buell McKeever, being first duly sworn, deposes and says that he is one of the attorneys for the Connecticut Mutual Life Insurance Company, petitioner in the above entitled cause; that he has read the foregoing statement of facts and is familiar with the matters therein set forth, and that the said statement is true to the best of his knowledge and belief.

BUELL MCKEEVER.

Subscribed and sworn to before me this 6th day of November, A. D. 1901.

WALDO F. TOBEY,
Notary Public.

[NOTARIAL SEAL]

SUGGESTIONS IN SUPPORT OF MOTION.

This motion is, in effect, a request by petitioner for the application to the situation presented in this cause of the rule of procedure adopted by this court in the recent case of *Toledo, St. Louis & Kansas City Railroad Co.* v. *Continental Trust Co.*, 176 U. S., 219. In this case as in that the transcript of the record from the Circuit Court was duly certified by the clerk of the Circuit Court, was filed in the Circuit Court of Appeals and thereafter was printed under the supervision, direction and control of the clerk of the Circuit Court of Appeals under and pursuant to the rules of that court, and copies thereof were distributed by him. These copies were known to him to be accurate transcripts of the record from the Circuit Court, and eleven of them were, at the request of petitioner's attorneys, forwarded directly from his possession to the clerk of this court and filed herein. In his certificate attached to the transcript of the proceedings had in the Circuit Court of Appeals the clerk of that court certifies, in effect, that said transcript exhibits a complete record of the cause in that court excepting certain original exhibits and the record in the Circuit Court.

Petitioner's counsel filed herein, with the petition for a writ of certiorari, an affidavit stating that the printed copy of the transcript of the record filed with the petition was a true copy of the transcript of record of the proceedings in the Circuit Court for the District of Kansas on which the case was heard in the United States Circuit Court of Appeals for the Eighth Circuit, without alteration, addition or diminution. These two transcripts, with the original exhibits, when filed, constitute a true record of the

entire cause in the Circuit Court of Appeals, and it is respectfully submitted that the clerk of the Circuit Court of Appeals has no right under the rules of this court to exact from this petitioner the sum of sixteen hundred dollars ($1,600) for certifying as correct a printed volume of a record which was printed under his direction and supervision for which service he has already been paid by this petitioner, and that, therefore, one of the orders in petitioner's motion should be entered.

GILBERT E. PORTER,
J. W. GREEN,
EDWARD S. ISHAM,
Counsel for Petitioner.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1901.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, *Petitioner*, vs. SALLIE E. HILLMON, *Respondent*.	No. 318.

STATE OF KANSAS, COUNTY OF DOUGLAS. } ss.

James W. Green, being first duly sworn, deposes and says that he has served the foregoing notice of motion upon Messrs. C. F. Hutchings and L. B. Wheat, by delivering to each of them on the 8th day of November, A. D. 1901, a copy of said notice, together with a copy of the foregoing motion, statement of facts, and the suggestions in support of said motion; and served said notice on J. H. Atwood on the same day by leaving a copy thereof, with copy of motion and statement of facts, at his law office with Mr. Hooper, who is associated with him in business.

J. W. GREEN.

Subscribed and sworn to before me this 9th day of November, A. D. 1901.

MINA P. DIAS,
Notary Public.

[NOTARIAL SEAL]

My commission expires October 11, 1904.